

**MARKUP OF H.R. 527, REGULATORY FLEXIBILITY
IMPROVEMENTS ACT OF 2011, AND H.R. 585,
SMALL BUSINESS SIZE STANDARD FLEXIBILITY
ACT OF 2011**

HEARING
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS

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MARKUP OF H.R. 527, REGULATORY FLEXIBILITY IMPROVEMENTS ACT OF 2011; AND H.R. 585, SMALL BUSINESS SIZE STANDARD FLEXIBILITY ACT OF 2011

WEDNESDAY, JULY 13, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 1:02 p.m., in room 2360, Rayburn House Office Building, Hon. Sam Graves (Chairman of the Committee) presiding.

Present: Representatives Graves, Bartlett, Chabot, King, Coffman, Mulvaney, Tipton, Landry, Herrera Beutler, West, Ellmers, Walsh, Barletta, Hanna, Velázquez, Schrader, Critz, Altmire, Clarke, Chu, Cicilline, Peters, Owens and Keating.

Chairman GRAVES. Good afternoon. We are going to bring the Committee meeting to order.

During the past 2 years, Federal agencies have dramatically expanded their regulatory reach. Those regulations imposed substantial costs on small businesses. So the scarce financial resources which could be used to hire employees must be diverted to regulatory compliance.

In response to this ever-expanding burden, President Obama on January 18th ordered the agencies that had been imposing these burdens to consider the impact on small businesses. He became the third straight President ordering Federal agencies to examine the consequences of their rules on small businesses, something that agencies have had to do for the past 30 years under the Regulatory Flexibility Act, or the RFA.

In addition to the efforts of three Presidents, congressional committees in both Houses and under Republican and Democrat leadership have held hearings about agency failure to comply. And finally, Federal courts have enjoined enforcement of rules until agencies prepared analyses required by the RFA.

Despite the concerted oversight efforts, Federal bureaucrats continue to ignore the RFA. It is incomprehensible to me that agencies remain either unable or unwilling to comply with the RFA. The legislation being considered at this markup was written with the express purpose of finally forcing agencies to live up to their responsibilities and really scrutinize the impact of their actions on small businesses.

Some people may ask why there is so much concern about compliance with the RFA. The answer is simple. Ninety-nine percent

of the businesses regulated by the Federal Government have less than 500 employees. If you are going to regulate businesses, it seems utterly logical that the Federal agencies actually know what the consequences will be for almost all of the businesses that have to comply with their rules.

The bills being considered at this markup are H.R. 527 and H.R. 585, simply have procedures and requirements to ensure Federal agencies understand the costs they are imposing on the 99 percent of the businesses that they regulate.

Chairman GRAVES. With that, I will now recognize Ranking Member Velázquez for her opening statement.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

No task before this Committee, indeed for all of Congress, is more important than helping small businesses create new jobs. With recent surveys suggesting that almost two-thirds of small firms are hesitant to hire more workers, all options should be on the table as we consider ways to foster small business job growth.

The two bills before the Committee today are certainly focused on issues critical to entrepreneurs. Ensuring small companies are not needlessly burdened by regulation is important to helping small firms expand. Small enterprises with fewer than 20 employees are disproportionately affected by regulations, paying 36 percent more in regulatory costs than their larger counterparts. Ensuring Federal agencies take effects like this into account when implementing new rules is vital for our economy's long-term health.

On a similar note, small business size standards are also a critical matter, determining which firms qualify for a wide range of technical assistance and counseling, to say nothing of billions of dollars in Federal procurement actions that are set aside for small companies each year.

While I agree these are important topics that we must address, during our previous hearings the Committee heard numerous misgivings about the two bills before us. As just one example, a witness invited by the majority testified that the SBA's Office of Advocacy does not have the resources or expertise to take responsibility for setting size standards. Other concerns center on whether the legislation expands the Regulatory Flexibility Act too broadly, making the system inefficient.

Unfortunately, matters like these have gone completely unaddressed in the legislation before the Committee today. If we are to enact legislation that achieves the Committee's goals, then more efforts should be made to correct the weaknesses in these two bills.

I am also concerned procedurally with issues that will cause problems going forward. H.R. 527, the regulatory bill we are marking up, is different from the measure recently approved by the House Judiciary Committee. How the legislative product coming from this Committee will be reconciled with the Judiciary Committee's remains an open question. It will be particularly disconcerting if Members' amendments prepared for today's markup are ultimately discarded when a final package moves to the Rules Committee and then to the floor.

Mr. Chairman, Members on both sides of the aisle recognize the need to reduce small business regulatory burdens and reform the

SBA size standard system; however, I remain concerned that the legislation before us today does not reflect the best work of the Committee. If we are to truly support America's small businesses, we must develop legislation that makes not just for good sound bites, but also for effective policy.

I thank the chairman for yielding.

Chairman GRAVES. Thank you, Ranking Member Velázquez.

Are there any other Members that wish to be recognized for the purpose of making an opening statement? If not, we will move forward.

The way I am going to do this, I want to make sure everybody has a chance to offer their amendment. I know we have a couple of conflicts, mainly Education and Workforce. And I think, Mr. Schrader, you have a conflict, too, possibly with Natural Resources' votes that are coming up.

What we are going to do is we will offer the amendments. We will go through 527 first, which is where most of the amendments are. If there are any recorded votes, then we will roll those, because I don't want to hang up anybody on that either. So we will try to accommodate everybody on this. And then the second bill I don't think there is too much controversy.

So we will move right on into our first item on our agenda, which is H.R. 527, the Regulatory Flexibility Improvement Act of 2011. The bill strengthens the RFA by closing loopholes that agencies have used to avoid compliance. Of the major changes made in the bill are mandating analysis of indirect effects, something that is already required in environmental impact statements; limiting the ability of the Internal Revenue Service to avoid compliance with the RFA; requiring more detailed assessments, thereby providing an enhanced review of agency compliance and challenges to agency regulations; and empowering the Office of Advocacy to write governmentwide regulations for agencies to follow in implementing the RFA.

This last requirement is by far the most significant in the bill. And when a dispute occurs over the interpretation of the RFA between the Office of Advocacy and the agency, of course we will defer to the Office of Advocacy's interpretation of the RFA.

The changes made in this legislation will, in the words of President George W. Bush, care that the law is on the books. Despite the increased analysis required under H.R. 527, nothing in the legislation will prevent an agency from issuing a rule in the manner that it wants.

I now recognize Ranking Member Velázquez for any remarks she may have.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

As we all know, recent jobs data confirmed that economic recovery is turning out to be a roller coaster ride rather than a steady climb. In April, 217,000 new jobs were created. Well, this changed dramatically while only 18,000 jobs were added last month.

In order to smooth out this growth, we need entrepreneurs to participate in the economy more than ever. That means giving them access to capital and the ability to compete for Federal Government contracts. It also means allowing them to start up and

grow stronger, but without the massive costs of unnecessary regulations.

Unfortunately, it is these very small businesses that bear the largest burden of Federal regulation. As of 2008, these entrepreneurs faced an annual regulatory cost of \$10,500. To address this very real problem, the Regulatory Flexibility Act was enacted in 1980 to give small businesses a louder voice in the regulatory process. It has been successful as regulatory costs were reduced by \$15 billion in 2010.

Even though RFA has improved the regulatory environment for small firms, it could do better. The legislation before us attempts to do so and on many fronts does this well. But in other areas I have major concerns that it overreaches and saddles SBA's Office of Advocacy with responsibilities that they cannot and do not want to handle.

There are areas where I believe that there is broad agreement to improve the RFA. This includes making agency analysis more detailed so that agencies cannot ignore RFA and simply certify that a rule has no significant economic impact on small businesses. Addressing this matter will ensure that agencies are required to provide a more factual basis for such certifications, rather than just a sentence which dismisses the concerns of small firms.

It is also important to give real teeth to section 610, which requires the agency to review outdated regulations that remain on the books, yet which continue costing small businesses money. While the RFA requires agencies to periodically review its system rules, these requirements are ambiguous, and agencies often do not apply them consistently. As a result, these reviews have been much less effective than they could be.

However, several of the proposed changes that we are discussing today are sweeping in nature and will give immense power to the Office of Advocacy, all at the expense of taxpayers. While Advocacy's role is critical to small businesses—it has a body of 9 million and 46 employees—it is already taxed in meeting its current role, and expanding its powers to include the offering of regulations and convene a panel governmentwide is well beyond its capacity.

Members on this Committee are aware of the fiscal constraints facing the U.S. Government. Now is not the time to make statutory leaps when smaller steps might be appropriate. We must be mindful of the taxpayers who are footing the bill.

Since being signed into law more than 30 years ago, the Regulatory Flexibility Act has played an essential part in reducing regulatory burden. As we move forward on this legislation, I believe that there is a better way to accomplish this goal, but without simply shifting the costs from small businesses to taxpayers. By doing so we can best ensure that entrepreneurs will be the catalyst for job creation that our economy needs. And with that I yield back, Mr. Chairman.

Chairman GRAVES. Thank you, Ranking Member Velázquez.

Are there any other Members that wish to be recognized for a statement on H.R. 527?

Seeing none, the Committee now moves to consideration of H.R. 527. The clerk will report the title of the bill.

The CLERK. H.R. 527, to amend chapter 6 of title 5, United States Code, commonly known as the Regulatory Flexibility Act.

Chairman GRAVES. I would ask unanimous consent that H.R. 527 be considered as read and open for amendment in its entirety.

And with that, we will just go through the amendments as they came in, the first two being Mr. Owens'.

Do you want to bring up amendment number 1? You are recognized for that purpose.

Mr. OWENS. Thank you very much, Mr. Chairman.

I offer this amendment to provide that regulations or the plan be written in such a way that we utilize plain language. That is something which greatly impacts small businesses as they try and get through, if you will, governmentese or legalese, and we look to make these not necessarily more simple, but more clear so that people can interpret and understand what they are being asked to do.

And we also are requiring in this amendment that the agency shall solicit input from affected small entities or associations of affected small entities so that, in fact, there is a compelling reason for the agency to go forward and reach out to small businesses.

As we know, small businesses are the job creators in our communities, and particularly in a rural district like mine, small business entities really are the lifeblood of what happens throughout our communities. So I would urge adoption of this amendment.

I yield back.

Chairman GRAVES. Is there any further discussion or anyone that wishes to be heard on the gentleman's amendment?

Seeing none, the amendment by the gentleman from New York makes abundant sense, in my opinion, and I wish to accept it. All those in favor, say aye.

All opposed.

It is the opinion of the chair that the ayes have it. The ayes do have it.

Mr. Owens, your second amendment.

Mr. OWENS. Thank you, Mr. Chairman.

The second amendment really addresses the same issue in that it requires or lays out how an agency will go through the outreach program so that, in fact, small businesses do have the opportunity to have input into the plans as they are developed by the agency. And again, we rely, in my district and in many districts throughout the United States, on small businesses for not only the development of jobs, but really the social fabric of the community. And again, I would urge adoption of this amendment.

Chairman GRAVES. Does any other Member wish to be heard on the gentleman's amendment?

Seeing none, I do support the gentleman's amendment. I think he did a good job of describing it. So with that, the question is on amendment number 2 by Mr. Owens. All those in favor, say aye.

All opposed, no.

The ayes appear to have it. In the opinion of the chair, the ayes do have it. The amendment is adopted.

We will next move to Mr. Schrader. Yours came in third. I think you have one amendment.

Mr. SCHRADER. Yes, sir. Thank you, Mr. Chairman.

This is a fairly simple, commonsense amendment that hopefully promotes transparency and a more open government for America's small businesses. At home I think we all hear that small business owners are not even aware of some of these Federal regulations that come out in rulemakings, and if they do come out, they don't understand them. So my amendment highlights the obligation of the Federal Registrar to biannually transmit a list of the rulemakings that have an economic impact on small entities. This amendment would require every agency to make this information prominently available in plain language on their Website on the same day it is sent to the Federal Registrar and keep it regularly updated.

It would also make the agencies identify the businesses and business sectors that the rules actually affect so small businesses can better understand which regulations actually might impact them.

I think this amendment is in line with the goals of our Committee to simplify regulations while making government more open and visible and more transparent. I urge the Committee to pass the amendment, please.

I yield back.

Chairman GRAVES. Does any other Member wish to be heard on Mr. Schrader's amendment?

Seeing none, I support the amendment, and I am willing to accept it. With that, the question is on the amendment by Mr. Schrader, which is amendment number 3. All those in favor, say aye.

All those opposed, no.

The ayes appear to have it. The ayes do have it. The amendment is adopted.

Next we will move to Ranking Member Velázquez for your amendments.

Ms. VELÁZQUEZ. Amendment number 6.

Chairman GRAVES. It is amendment number 6.

Ms. VELÁZQUEZ. Mr. Chairman, I have an amendment at the desk.

Chairman GRAVES. The ranking member is recognized. Can you read the amendment?

The CLERK. Amendment to H.R. 527, page 17, line 12, insert after "entities." the following.

Chairman GRAVES. I would ask unanimous consent—

Ms. VELÁZQUEZ. I ask unanimous consent that the amendment be considered as read.

Chairman GRAVES. Seeing no objections, so ordered.

Is that the right one?

Ms. VELÁZQUEZ. Mr. Chairman, with Americans tightening their belts, we must be especially careful how taxpayers' dollars are spent. In this budget-conscious time, it is critical that we have a close accounting for every government expenditure. Fiscal responsibility starts with transparency. We all want to make the regulatory appeal process smoother and fairer for small businesses; however, entrepreneurs will also want to know what the cost of those changes will be. After all, small businesses that are struggling to rebound from this recession don't have the luxury of spending money they do not have.

My amendment will bring additional transparency to the process so that we can easily track costs incurred by the new panel system. If we are going to fundamentally alter the regulatory review system, it seems like common sense to keep close tabs on the financial ramifications of these changes. In addition, the public and Congress could see how those costs are broken out, providing further protection against any wasteful behavior. Not only will this prevent abuse, but it will help ensure that taxpayers are getting bang for their buck.

Mr. Chairman, all of us want the regulatory review process to work better, but we should also have a clear handle on expenses that come from changing the system. American taxpayers are carefully monitoring their own budgets and tracking every dollar they spend. Most small businesses are doing the same. This amendment simply ensures that this bill adheres to the same standard, and I urge my colleagues to support this amendment.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

Seeing none, the amendment is going to require that chief counsel prepare a report on the costs associated with conducting the panels to obtain small entity input prior to publication of the proposed rules in the Federal Register, which I would raise two objections. First, the cost and time to prepare the report actually detract from the ability of the Office of Advocacy to conduct panels. And second, agencies regularly obtain prepublication input as part of the rulemaking process, and the cost of such meetings isn't tracked. As a result, I cannot support the amendment.

Ms. VELÁZQUEZ. Under the legislation—Mr. Chairman, if you would yield—

Chairman GRAVES. I will yield.

Ms. VELÁZQUEZ [continuing]. The agency has to provide a report. And what we are only asking is to add the cost of this panel. I think that this Committee has been given no cost information about all these authorities, and this amendment will accomplish that. For a party that talks about controlling costs, it is ironic that you don't even know how much this is going to cost to taxpayers. This is about accountability and transparency.

Chairman GRAVES. Yield back?

Ms. VELÁZQUEZ. I yield back.

Chairman GRAVES. With that, the question is on the amendment number 6, offered by Ranking Member Velázquez. All those in favor, say aye.

All opposed, no.

Ms. VELÁZQUEZ. The ayes have it.

Chairman GRAVES. The noes appear to have it. The noes do have it.

Ms. VELÁZQUEZ. I ask for a recorded vote.

Chairman GRAVES. Absolutely. A recorded vote has been ordered. A recorded vote has been ordered pursuant to rule 10 of the Committee's rules. Proceedings on the amendment will be postponed. Again, we want to make sure everybody is here when we do our votes so that we don't hang anybody on that.

Ranking Member Velázquez, you are recognized for—

Ms. VELÁZQUEZ. Mr. Chairman, I have an amendment at the desk. It is amendment number 7.

Chairman GRAVES. Amendment number 7. Will the clerk please read the title?

The CLERK. Page 3, line 12, insert before the period at the end the following—

Chairman GRAVES. I ask unanimous consent that the bill be considered as read. Seeing no objections, I yield to Ranking Member Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

I think we are all united by our desire to help small businesses, and this is why we are here today. Of course, it is clear that there are different approaches to accomplish this. Some have seemed to suggest that the best way to help entrepreneurs is by grinding the regulatory process to a halt. They have often cited the challenges of tax and health care matters. However, attempting to slow regulation could actually harm small businesses in certain cases.

There is clearly one area of regulation that I think we can all agree where stymieing the process could hurt small businesses, and this is regulations issued by the SBA regarding lending, investment, contracting and entrepreneurial development. These regulations actually help small businesses get the resources they need. They are not onerous. Rather, they just do the opposite. They allow small businesses to get access to capital, procurement opportunities or technical assistance. These regulations allowed the agency to provide entrepreneurs with more than \$20 billion in capital last year. Without such rules, business owners will be unable to apply for loans, and many will go without the financing they need.

In addition, there are many instances where the SBA might establish a new investment program for veterans returning from the war in Afghanistan. And if they do, we should make sure that nothing stands in SBA's way to get this initiative up and running quickly.

Unfortunately, while well intentioned, H.R. 527 is a one-size-fits-all policy that views all regulations as being bad for businesses. This is far from the case when it comes to the SBA, who is charged with helping small businesses. The truth is that H.R. 527 will cause delays in the issuance of regulations at the SBA. This means that small businesses will have to wait longer for critical capital, contracts or technical assistance, resulting in slower job creation in our communities.

With the economy struggling with high unemployment, we need to be doing everything we can to help small businesses hire more people. Enabling the SBA to channel its resources to entrepreneurs more expeditiously will do this. For this reason I urge a yes vote on this amendment, and I yield back the balance of my time.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

Seeing none, I cannot support the amendment simply because, you know, the SBA is one agency that should ensure its regulations maximize its benefits to small businesses. The point here is to strengthen the RFA, to make sure that regulations either do the least amount of harm or the most good for small businesses. And I think it should apply in full force to the SBA, if no other agency.

So with that, the question is on the amendment number 7 offered by Ranking Member—

Ms. VELÁZQUEZ. Mr. Chairman, if you will yield.

Chairman GRAVES. I would yield.

Ms. VELÁZQUEZ. You know, when we pass any legislation here to create a new venture capital, small business lending, and Members will come back to ask questions as to why that program is up and running, then you are going to have the SBA Administrator here telling us it is happening, and it is your fault because we enacted legislation that is a one-size-fits-all policy, applying to everything that is related to Federal agencies, including SBA when we need to put money into the hands of small businesses. We will be responsible for not doing that quickly as we need in order for them to create jobs.

Thank you for yielding.

Chairman GRAVES. Absolutely. And I again reiterate that the purpose of the RFA is to make sure that agencies, when they pass rules and regulations, don't harm small businesses. And I think it should apply to the SBA just as it applies to everybody else.

So with that, the question is on the amendment number 7 offered by Ranking Member Velázquez. All those in favor, say aye.

All those opposed, no.

Ms. VELÁZQUEZ. The ayes have it.

Chairman GRAVES. The noes appear to have it. The noes do have it. The amendment is—

Ms. VELÁZQUEZ. Recorded vote, Mr. Chairman. Recorded vote.

Chairman GRAVES. Absolutely. Pursuant to a recorded vote—pursuant to rule 10 of the Committee's rules, proceedings on the amendment will be postponed.

We will move to Mr. Critz, and you have an amendment. Which one?

Mr. CRITZ. Critz amendment 18.

Chairman GRAVES. Eighteen. Number 8.

Mr. CRITZ. Oh, number 8.

Chairman GRAVES. I hope we don't have 18.

Mr. CRITZ. Eight on your list.

Chairman GRAVES. Would the clerk please read the title, Critz amendment number 8?

The CLERK. Page 17, line 9, insert after "small entities" the following.

Chairman GRAVES. I would ask unanimous consent that the amendment be considered read. Seeing no objections, the amendment is considered read.

And I yield to Mr. Critz for an explanation of your amendment.

Mr. CRITZ. Thank you, Mr. Chairman.

My amendment is quite simple. It would require the Small Business Advocacy Review Panel to report—report to include an assessment of a proposed rule's impact on the cost small entities pay for energy.

Volatility and fluctuations in energy prices and supply disproportionately impact the small business sector, particularly those in transportation-related industries. This would require that the reports issued by Small Business Advocacy Review Panels include an assessment of a proposed rule's impact on the cost of energy to

small business. It would provide agencies with vital information about how a regulation could be modified so that small businesses would incur lower energy prices.

With the price of gas as it is, and with the discovery of natural gas across regions of Pennsylvania, we see a possibility of really lowering our energy costs and doing good things for small business. And as we know, any increase in costs has a stronger or a larger impact on small business, who have less flexibility. So my proposed amendment is only to make sure that any proposed rule that we are looking at, what the impact is to energy costs. And I yield support for my amendment and yield back.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

I think this should be assessed under the total cost of the proposed rule, but I believe the gentleman's clarification on energy is entirely appropriate. And with that, I support the amendment.

The question is on the amendment number 8 by Mr. Critz. All those in favor, say aye.

All those opposed, no.

The ayes appear to have it. The ayes do have it. The amendment is adopted.

Mr. Critz, you have amendment number 9?

Mr. CRITZ. Yes, Mr. Chairman.

Chairman GRAVES. Would the clerk please read the title.

The CLERK. Page 18, insert after line 11 the following, and redesignate succeeding subsections accordingly.

Chairman GRAVES. I ask unanimous consent that the amendment be considered as read. Seeing no objections, we will move forward.

Mr. Critz, you are recognized on amendment number 9.

Mr. CRITZ. Thank you, Mr. Chairman.

As much of the discussion that has been going on in the public eye and in Congress, we have been talking about trade agreements. And as a member of this panel, obviously we want to make sure that when this country is negotiating trade agreements, we see and protect the interests of small business and see what the impact would be on them. And that is why I offer this amendment. But in discussions with leadership, I think the best way forward is that I am going to withdraw this amendment so that I can work with the leadership to make sure that there is protections for small business, and therefore I withdraw my amendment, Mr. Chairman.

Chairman GRAVES. Thanks, Mr. Critz. And I assure you we will work with you and try to figure out if we need to do anything or make sure what you are trying to address is in the bill.

I now recognize Ranking Member Velázquez. We have number 5 and number 4.

I might let the Committee know that we—there is votes—seven votes started in Education and Workforce. So as soon as they get through those, we will—and hopefully they will be through with them by the time we bring the votes back up. Again, we want to make sure we don't hang anybody on votes, so we will wait until everybody gets here.

Ms. VELAZQUEZ. I have an amendment at the desk, and this is amendment number 4.

Chairman GRAVES. Would the clerk please read the title, amendment number 4, Ranking Member Velázquez.

The CLERK. At the end of the bill—add, at the end of the bill, the following.

Chairman GRAVES. I would ask unanimous consent that the amendment be considered as read. Seeing no objections—

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Chairman GRAVES. I recognize—

Ms. VELÁZQUEZ. Our Nation's debt has reached a critical level as evidenced by the ongoing negotiations surrounding the debt ceiling. With this in mind, all Committees must be careful as they create new programs such as the ones in H.R. 527 which entail significant costs.

H.R. 527 establishes sweeping new authorities and responsibility for the Office of Advocacy. This includes expanding the panel process to every government agency from 3 to 50–52, while currently it is only at 3 agencies. The bill also requires Advocacy to issue rules and reflect subject IRS interpretive rules and land management plans to the RFA.

These are significant new obligations for Advocacy, which only has a \$9 million budget and 46 employees. I am sure that this is not an accident that H.R. 527 contains no authorization of funding to carry out these provisions. And given the fiscal constraints we are operating under, now is not the time to be expanding the bureaucracy. Therefore, the amendment I am offering is meant to provide an airtight guarantee that this bill will not spend taxpayers' dollars that we don't have. It simply clarifies that SBA cannot spend any new funds to implement the act. If it does spend new money, it cannot increase the Federal budget deficit.

These requirements will ensure that H.R. 527 is not adding to the debt that we are all so concerned about. All committees are encountering this issue, and we must play our part. We need to be more careful about spending taxpayers' money, and including an ironclad guarantee in this bill accomplishes that.

If Members wish to truly reduce the Nation's deficit, then supporting this amendment should be noncontroversial. With the Federal debt exceeding 14 trillion, we cannot simply pass a bill, even if they have important goals, and just hope that it does not cost too much. We need to take a stand and make sure the work we do this year does not add to the debt. I urge my colleagues to not only talk the talk, but walk the walk by ensuring this bill does not add red ink to our budget deficit. With that, I ask a yes vote and yield the balance of my time.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

Mr. Schrader.

Mr. SCHRADER. Just a point of inquiry. I mean, how are we going to pay for this at the end of the day? What is the plan?

Chairman GRAVES. Well, I will refer to counsel.

Chief COUNSEL. I wouldn't actually expect that the requirements set forth in this bill will actually add any additional costs to the ongoing rulemaking process. The Office of Advocacy already reviews every agency's regulations, having worked in that office for over 9 years. They actually review every agency's regulation. The

other agencies that would be involved in the panel process, for example, already have significant numbers of employees devoted to the rulemaking process. Having them meet seems to be—would seem to be a fairly logical result of attempting to gather information prior to the publication of the proposed rule. So I would argue that it would have no increase in the impact on costs.

Mr. SCHRADER. I am sorry. Just one further clarification, Mr. Chair. Just trying—but if the agency is now making rules, not just responding, wouldn't that require more time and effort they would have to research stuff and convene themselves themselves? Did I misunderstand that?

Chief COUNSEL. Well, the agencies clearly will have to gather more information, but I would argue that, for example, for many of the rules that would be covered with additional analysis under this bill, they are already required to do that type of analysis under Executive Order 12866, which requires agencies for significant rules to do a complete benefit-cost analysis. For rules that the agency would have a significant environmental impact, and there are a lot of rules that actually do, agencies are already required to comply with the requirements that are issued by the Council on Environmental Quality to access indirect socioeconomic impacts.

So I would suggest that it is most likely that the data is already out there. It just needs to be tailored in a manner to assess the adequacy of the impact on small business as opposed to the data now simply being there in this—well, there is this economic impact, but we haven't actually focused on the consequences to small business. So that is what this would do. I don't think the data gathering that is already going on would add any additional costs because they should already be doing that data gathering if they are going to do rational rulemaking.

Ms. VELÁZQUEZ. Would the gentleman yield?

Chairman GRAVES. Not quite. You have still got a little bit of time. But regardless, I will recognize the ranking member, and then I will make a statement.

Ms. VELÁZQUEZ. It is just beyond me. You could dance all over this question all day around, but how could you say that this is not going to require more resources when you are adding over 50 new agencies to the panel process? And this is Washington, and this is the Federal Government. So if it is not going to add any more costs, then the chairman will have no problem accepting my amendment, because this is exactly what I am asking for.

And with that, I yield back.

Chairman GRAVES. You know, under this amendment—and I will reclaim the time. But under this amendment, you know, all we are asking that Federal agencies to do is their job.

Bottom line is is that Federal agencies implement regulations that are burdensome to businesses, whether it is the Federal deficit or a budget surplus. It doesn't make any difference one way or the other. I want to know when a Federal agency is proposing something that is going to cost small businesses a lot of money, and there are certain things that the Federal Government should be doing no matter what, and this is one of them. This is something that needs to be done, and, again, it is the law. They are supposed to be doing it. We are going to put some teeth into it to make darn

sure they are doing it. I want to make sure we know and the Federal Government is preventing businesses from doing what businesses want to do.

With that, the question is on the amendment number 4, by Ranking Member Velázquez. All those in favor, say aye.

All those opposed, no.

Ms. VELÁZQUEZ. Mr. Chairman, I am sorry. Just one inquiry. What will happen if the report comes back from the CBO and it does show that it is going to cost more money than the \$9 million that has been allocated? What will happen? What are we going to do? That is my only question.

Chairman GRAVES. We will deal with it then. But the bottom line is I want the Federal agencies to do their job.

Going back to the vote. All those in favor, say aye.

All those opposed, no.

The noes appear to have it. The noes do have it. The amendment is not adopted.

Ms. VELÁZQUEZ. I ask for a recorded vote, Mr. Chairman.

Chairman GRAVES. A recorded vote has been requested pursuant to rule 10 of the Committee's rule. Proceedings on the amendment shall be postponed.

You have number 5?

Ms. VELÁZQUEZ. Yes, sir. I have an amendment at the desk, amendment number 5.

Chairman GRAVES. The clerk will please read the amendment.

The CLERK. Strike all after the enacting clause and insert the following.

Ms. VELÁZQUEZ. I ask unanimous consent that the amendment be considered as read.

Chairman GRAVES. Seeing no objection, the ranking member is recognized.

Ms. VELÁZQUEZ. The Regulatory Flexibility Act has served small businesses well, reducing regulatory costs by \$15 billion in 2010 alone. Yes, it could do better, and the substitute amendment before us does it. However, unlike H.R. 527, this substitute does not create what amounts to an array of unfunded mandates on the Office of Advocacy.

This substitute is the same bipartisan legislation, bipartisan, introduced by our Committee and by our former colleague Brad Ellsworth from a previous Congress. At the time this Committee worked in a bipartisan manner and reported it out by a recorded vote of 26 to 0.

It makes improvements to the most significant deficiencies facing RFA without the sweeping and expensive changes of H.R. 527. This includes making sure that agencies live up to their obligations to review the burdens of existing rule on small businesses. The GAO has reported on numerous occasion that agency compliance with this requirement was poor. My amendment holds the agencies more accountable by requiring them to report the results of their reviews to Congress annually.

This substitute also addresses what the Chief Counsel for Advocacy has described as the biggest loophole in the law: the fact that agencies do not have to consider the full economic impact of the rules and regulations on small businesses. By fixing this problem,

my amendment will require agencies to consider the indirect impacts of the rules on small businesses.

Steps are also taken to make red flag analysis more detailed so that agencies cannot ignore the RFA and simply certify that a rule has no significant impact on small businesses. Addressing this matter will ensure that agencies are required to provide a more factual basis for such certifications, rather than just a sentence which dismisses the concerns of small firms.

Unlike H.R. 527, this substitute does not create a new governmentwide bureaucracy or foist new responsibility on the Office of Advocacy, which only has a \$9 million budget. Instead, this substitute makes the most important changes to the RFA that small businesses have called for over the last 5 years. In doing so, it is cost-effective and responsible to the taxpayers.

When it was developed in a prior Congress, both sides of the aisle and the small business community had a hand in developing it. As a result, the substitute will strengthen red flags and help stop the growth of small business compliance costs. I urge Members to vote yes, and I yield the balance of my time back.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

Seeing none, the amendment in the form of a substitute by the gentlelady from New York, it obviously recognizes the RFA and the analysis done under it needs strengthening. But given the increased regulatory burden that is coming out of this administration, I think that much bolder action needs to be taken, and that is the reason we came up with 527, in which case I cannot support the gentlelady's amendment.

With that, the question is on the amendment number 5, the gentlelady from New York, Ms. Velázquez.

Ms. VELÁZQUEZ. Mr. Chairman, I just would like to add this is Brad Ellsworth's bill. He wasn't a liberal, didn't get any score on liberal caucus. Very conservative. The legislation was a bipartisan bill. And I assure you that this legislation that is going to be reported today will not be passed on the Senate nor signed by the President.

Here we are seeking solutions to small business needs, and rather than passing something to score political points, we should pass something that has bipartisan support and get it done on behalf of small businesses.

With that, I yield back. Thank you.

Chairman GRAVES. The question is on the amendment number 5 by Ranking Member Velázquez. All those in favor, say aye.

All those opposed, no.

The noes appear to have it.

Ms. VELÁZQUEZ. Recorded vote.

Chairman GRAVES. A recorded vote has been requested. Pursuant to rule 10 of the Committee's rules, proceedings on the amendment shall be postponed.

Are there any other amendments to H.R. 527?

Seeing none, the Committee is going to stand in recess shortly until we get the rest of our Members up here. And again, I said that I don't want to hang any Member when it comes to votes, and so we are going to stand in recess for a very short period of time.

After that we will take up the next bill, which should not take very long at all. With that, we will stand in recess shortly and get everybody up here.

[Recess.]

Chairman GRAVES. We will go ahead and bring the hearing back to order.

We have four amendments that recorded votes were requested on. We will go through those real quick, and then we will dispose of H.R. 585 real fast, which shouldn't take long at all.

Right now the question occurs on agreeing to the amendment offered by Representative Velázquez, which a recorded vote was ordered. The first one is going to be Velázquez number 6. Go ahead and call the roll.

The CLERK. Mr. Graves?

Mr. GRAVES. No.

The CLERK. Mr. Graves votes no.

Mr. Bartlett?

Mr. BARTLETT. No.

The CLERK. Mr. Bartlett votes no.

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. King?

Mr. KING. No.

The CLERK. Mr. King votes no.

Mr. Coffman?

Mr. COFFMAN. No.

The CLERK. Mr. Coffman votes no.

Mr. Mulvaney?

[No response.]

The CLERK. Mr. Tipton?

Mr. TIPTON. No.

The CLERK. Mr. Tipton votes no.

Mr. Landry?

Mr. LANDRY. No.

The CLERK. Mr. Landry votes no.

Ms. Herrera Beutler?

Mr. HERRERA BEUTLER. No.

The CLERK. Ms. Herrera Beutler votes no.

Mr. West?

Mr. WEST. Yes.

The CLERK. Mr. West votes yes.

Mrs. Ellmers?

Mrs. ELLMERS. No.

The CLERK. Mrs. Ellmers votes no.

Mr. Walsh?

Mr. WALSH. No.

The CLERK. Mr. Walsh votes no.

Mr. Hanna?

Mr. HANNA. No.

The CLERK. Mr. Hanna votes no.

Mr. Barletta?

Mr. BARLETTA. No.

The CLERK. Mr. Barletta votes no.

Ms. Velázquez?
 Ms. VELÁZQUEZ. Yes.
 The CLERK. Ms. Velázquez votes yes.
 Mr. Schrader?
 Mr. SCHRADER. Yes.
 The CLERK. Mr. Schrader votes yes.
 Mr. Critz?
 Mr. CRITZ. Yes.
 The CLERK. Mr. Critz votes yes.
 Mr. Altmire?
 Mr. ALTMIRE. Aye.
 The CLERK. Mr. Altmire votes yes.
 Ms. Clarke?
 Ms. CLARKE. Aye.
 The CLERK. Ms. Clarke votes yes.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes yes.
 Mr. Cicilline?
 Mr. CICILLINE. Aye.
 The CLERK. Mr. Cicilline votes yes.
 Mr. Richmond?
 [No response.]
 The CLERK. Mr. Peters?
 Mr. PETERS. Yes.
 The CLERK. Mr. Peters votes yes.
 Mr. Owens?
 Mr. OWENS. Aye.
 The CLERK. Mr. Owens votes yes.
 Mr. Keating?
 [No response.]
 Chairman GRAVES. Are there any other Members that wish to vote?
 Mr. Mulvaney?
 Mr. MULVANEY. No.
 The CLERK. Mr. Mulvaney votes no.
 Chairman GRAVES. The clerk will report the vote.
 The CLERK. Thirteen noes and ten ayes.
 Chairman GRAVES. On this vote there were 10 yeas and 13 noes.
 The amendment is not agreed to.
 The question now occurs on agreeing to the amendment offered by Representative Velázquez, number 7. The clerk will call the roll.
 The CLERK. Mr. Graves?
 Mr. GRAVES. No.
 The CLERK. Mr. Graves votes no.
 Mr. Bartlett?
 Mr. BARTLETT. No.
 The CLERK. Mr. Bartlett votes no.
 Mr. Chabot?
 Mr. CHABOT. No.
 The CLERK. Mr. Chabot votes no.
 Mr. King?
 Mr. KING. No.
 The CLERK. Mr. King votes no.

Mr. Coffman?
 Mr. COFFMAN. No.
 The CLERK. Mr. Coffman votes no.
 Mr. Mulvaney?
 Mr. MULVANEY. No.
 The CLERK. Mr. Mulvaney votes no.
 Mr. Tipton?
 Mr. TIPTON. No.
 The CLERK. Mr. Tipton votes no.
 Mr. Landry?
 Mr. LANDRY. No.
 The CLERK. Mr. Landry votes no.
 Ms. Herrera Beutler?
 Ms. HERRERA BEUTLER. No.
 The CLERK. Ms. Herrera Beutler votes no.
 Mr. West?
 Mr. WEST. No.
 The CLERK. Mr. West votes no.
 Mrs. Ellmers?
 Mrs. ELLMERS. No.
 The CLERK. Mrs. Ellmers votes no.
 Mr. Walsh?
 Mr. WALSH. No.
 The CLERK. Mr. Walsh votes no.
 Mr. Hanna?
 Mr. HANNA. No.
 The CLERK. Mr. Hanna votes no.
 Mr. Barletta?
 Mr. BARLETTA. No.
 The CLERK. Mr. Barletta votes no.
 Ms. Velázquez?
 Ms. VELÁZQUEZ. Aye.
 The CLERK. Ms. Velázquez votes yes.
 Mr. Schrader?
 Mr. SCHRADER. Yes.
 The CLERK. Mr. Schrader votes yes.
 Mr. Critz?
 Mr. CRITZ. Aye.
 The CLERK. Mr. Critz votes yes.
 Mr. Altmire?
 Mr. ALTMIRE. Aye.
 The CLERK. Mr. Altmire votes yes.
 Ms. Clarke?
 Ms. CLARKE. Aye.
 The CLERK. Ms. Clarke votes yes.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes yes.
 Mr. Cicilline?
 Mr. CICILLINE. Aye.
 The CLERK. Mr. Cicilline votes yes.
 Mr. Richmond?
 [No response.]
 The CLERK. Mr. Peters?

Mr. PETERS. Aye.
The CLERK. Mr. Peters votes yes.
Mr. Owens?
Mr. OWENS. Aye.
The CLERK. Mr. Owens votes yes.
Mr. Keating?
[No response.]
Chairman GRAVES. Are there any other Members who wish to vote?
The clerk shall report the vote.
The CLERK. Nine yeases, fourteen noes.
Chairman GRAVES. On this vote, there were 9 yeas, 14 noes. The amendment is not agreed to.
The question now occurs on agreeing to the amendment offered by Representative Velázquez, number 4, which would be Velázquez amendment number 4. The clerk shall call the roll.
The CLERK. Mr. Graves?
Mr. GRAVES. No.
The CLERK. Mr. Graves votes no.
Mr. Bartlett?
Mr. BARTLETT. No.
The CLERK. Mr. Bartlett votes no.
Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot votes no.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King votes no.
Mr. Coffman?
Mr. COFFMAN. No.
The CLERK. Mr. Coffman votes no.
Mr. Mulvaney?
Mr. MULVANEY. No.
The CLERK. Mr. Mulvaney votes no.
Mr. Tipton?
Mr. TIPTON. No.
The CLERK. Mr. Tipton votes no.
Mr. Landry?
Mr. LANDRY. No.
The CLERK. Mr. Landry votes no.
Ms. Herrera Beutler?
Ms. HERRERA BEUTLER. No.
The CLERK. Ms. Herrera Beutler votes no.
Mr. West?
Mr. WEST. Yes.
The CLERK. Mr. West votes yes.
Mrs. Ellmers?
Mrs. ELLMERS. No.
The CLERK. Mrs. Ellmers votes no.
Mr. Walsh?
Mr. WALSH. No.
The CLERK. Mr. Walsh votes no.
Mr. Hanna?
Mr. HANNA. No.

The CLERK. Mr. Hanna votes no.

Mr. Barletta?

Mr. BARLETTA. No.

The CLERK. Mr. Barletta votes no.

Ms. Velázquez?

Ms. VELÁZQUEZ. Yes.

The CLERK. Ms. Velázquez votes yes.

Mr. Schrader?

Mr. SCHRADER. Yes.

The CLERK. Mr. Schrader votes yes.

Mr. Critz?

Mr. CRITZ. Aye.

The CLERK. Mr. Critz votes yes.

Mr. Altmire?

Mr. ALTMIRE. Aye.

The CLERK. Mr. Altmire votes yes.

Ms. Clarke?

Ms. CLARKE. Aye.

The CLERK. Ms. Clarke votes yes.

Ms. Chu?

Ms. CHU. Aye.

The CLERK. Ms. Chu votes yes.

Mr. Cicilline?

Mr. CICILLINE. Aye.

The CLERK. Mr. Cicilline votes yes.

Mr. Richmond?

[No response.]

The CLERK. Mr. Peters?

Mr. PETERS. Aye.

The CLERK. Mr. Peters votes yes.

Mr. Owens?

Mr. OWENS. Aye.

The CLERK. Mr. Owens votes yes.

Mr. Keating?

[No response.]

Chairman GRAVES. Do any other Members wish to vote?

Seeing none, the clerk shall report the vote.

The CLERK. Ten ayes, thirteen noes.

Chairman GRAVES. On this vote there were 10 yeas, 13 noes. The amendment is not agreed to.

The question now occurs on the amendment offered by Representative Velázquez in which a recorded vote was ordered. This is Velázquez number 5. The clerk shall call the roll.

The CLERK. Mr. Graves?

Mr. GRAVES. No.

The CLERK. Mr. Graves votes no.

Mr. Bartlett?

Mr. BARTLETT. No.

The CLERK. Mr. Bartlett votes no.

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. King?

Mr. KING. No.

The CLERK. Mr. King votes no.
 Mr. Coffman?
 Mr. COFFMAN. No.
 The CLERK. Mr. Coffman votes no.
 Mr. Mulvaney?
 Mr. MULVANEY. No.
 The CLERK. Mr. Mulvaney votes no.
 Mr. Tipton?
 Mr. TIPTON. No.
 The CLERK. Mr. Tipton votes no.
 Mr. Landry?
 Mr. LANDRY. No.
 The CLERK. Mr. Landry votes no.
 Ms. Herrera Beutler?
 Ms. HERRERA BEUTLER. No.
 The CLERK. Ms. Herrera Beutler votes no.
 Mr. West?
 Mr. WEST. No.
 The CLERK. Mr. West votes no.
 Mrs. Ellmers?
 Mrs. ELLMERS. No.
 The CLERK. Mrs. Ellmers votes no.
 Mr. Walsh?
 Mr. WALSH. No.
 The CLERK. Mr. Walsh votes no.
 Mr. Hanna?
 Mr. HANNA. No.
 The CLERK. Mr. Hanna votes no.
 Mr. Barletta?
 Mr. BARLETTA. No.
 The CLERK. Mr. Barletta votes no.
 Ms. Velázquez?
 Ms. VELÁZQUEZ. Aye.
 The CLERK. Ms. Velázquez votes yes.
 Mr. Schrader?
 Mr. SCHRADER. Yes.
 The CLERK. Mr. Schrader votes yes.
 Mr. Critz?
 Mr. CRITZ. Aye.
 The CLERK. Mr. Critz votes yes.
 Mr. Altmire?
 Mr. ALTMIRE. Aye.
 The CLERK. Mr. Altmire votes yes.
 Ms. Clarke?
 Ms. CLARKE. Aye.
 The CLERK. Ms. Clarke votes yes.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes yes.
 Mr. Cicilline?
 Mr. CICILLINE. Aye.
 The CLERK. Mr. Cicilline votes yes.
 Mr. Richmond?
 [No response.]

The CLERK. Mr. Peters?

Mr. PETERS. Aye.

The CLERK. Mr. Peters votes yes.

Mr. Owens?

Mr. OWENS. Aye.

The CLERK. Mr. Owens votes yes.

Mr. Keating?

[No response.]

Chairman GRAVES. Are there any other Members wishing to vote?

Seeing none, the clerk shall report the vote.

The CLERK. Nine ayes, fourteen noes.

Chairman GRAVES. On this vote, there were 9 yeas, 14 noes. The amendment is not agreed to.

Are there any other Members wishing to offer an amendment?

Seeing none, the question is on agreeing to H.R. 527, as amended. All those in favor, say aye.

All those opposed, no.

In the opinion of the chair, the ayes have it. The bill is favorably reported to the House.

Chairman GRAVES. Next order of business is H.R. 585, the Small Business Size Standard Act of 2011. The purpose of this bill is to ensure that Federal agencies have a consistent determination concerning the use of non-SBA size standards in the regulatory programs.

Under the RFA, an agency can consult with the Office of Advocacy and utilize a different definition of a small business than the one adopted by the SBA when it prepares an initial regulatory flexibility analysis. If the agency then uses that definition to develop the regulation that reduces reporting burdens on small businesses, it would have to get the approval of the Administrator of the SBA under the Small Business Act. The Administrator might reject the request. Thus, an agency seeking to help small businesses create jobs by reducing paperwork might find assistance from the Office of Advocacy, but be frustrated by a different decision from the Administrator. H.R. 585 simply ensures that such a result could not happen.

Nothing in the bill transfers to the Office of Advocacy the authority to make small business size determinations for eligibility of assistance under the Small Business Act or the Small Business Investment Act.

So with that I now recognize Ranking Member Velázquez for her remarks on H.R. 585.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Size standards are a highly technical, but absolutely critical component of our Committee's work. After all, they are what legally determine whether a company is, in fact, a small business. Because of this we are able to effectively channel resources to these entrepreneurs so they are better able to succeed in creating jobs.

Historically the SBA's Office of Size Standards has been responsible for this area. It establishes and reviews standards across a wide range of industries. In some instances this office approves the small business size standard used by other agencies when implementing certain statutes. Aside from the Small Business Act and

the Small Business Investment Act, this makes sense, because the SBA has the experience and resources necessary to determine this matter governmentwide. The legislation before us, H.R. 585, changes this. While the SBA will continue to approve size standards for its enabling statutes, it will no longer do so for all the statutes.

The result of approving this legislation will be to create a duplicative size standard authority in both the SBA and the Office of Advocacy. Such a move is curious given that the Committee spent so much time discussing the need to reduce bureaucratic duplication. In fact, there is an entire section entitled "Government Waste and Duplication in SBA Programs" in the Committee's budget views.

Such duplication is always concerning, but particularly so when the country is faced with staggering debt. This legislation will add to this debt by requiring the Office of Advocacy to hire new personnel and conduct analysis identical to those already in existence in the SBA's Office of Size Standards. Common sense tells you that creating such similar entities is just plain unnecessary and simply not a good use of taxpayers' money. For this reason, your own witness, the Chief Counsel of Advocacy under President Ronald Reagan, testified just last month before this Committee that advocacy should not take on the new responsibilities outlined in H.R. 585.

The mission of the Office of Advocacy is to be a champion for our Nation's small businesses, not to determine size standards. The SBA already does this. We need to make sure that advocacy remains true to this goal and continues to be a tool to limit waste, rather than becoming a source of it.

With that, Mr. Chairman, I yield back.

Chairman GRAVES. Any other Members that wish to be recognized for a statement on H.R. 585?

Seeing none, the Committee now moves for consideration of H.R. 585. The clerk will please report the title of the bill.

The CLERK. H.R. 585, To amend the Small Business Act to provide for the establishment and approval of small business concern size standards by the Chief Counsel for Advocacy of the Small Business Administration.

Chairman GRAVES. I ask unanimous consent that H.R. 585 be considered as read and open for amendment in its entirety.

Does any Member seek recognition for the purpose of offering an amendment?

Ms. VELÁZQUEZ. Yes, Mr. Chairman. I have an amendment at the desk.

Chairman GRAVES. Clerk, please report the amendment.

The CLERK. Add, at the end of the bill, the following.

Ms. VELÁZQUEZ. I ask unanimous consent that my amendment be considered as read.

Chairman GRAVES. Seeing no objection, so moved.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. Chairman, ensuring that agencies are operated in an efficient manner has never been more important. This means that efforts must be made to limit programs that duplicate each other.

Such duplication is unnecessary at any time, but certainly so when our Federal debt is now exceeding \$14 trillion.

Unfortunately, the underlying bill is an attempt to solve a bureaucratic coordination problem which creates a duplication of resources within the SBA. To approve a size standard requires expertise and analytical resources which the Office of Advocacy will have to acquire. This will duplicate similar resources maintained by the SBA in its Office of Size Standards. In this regard, H.R. 585 raises a red flag.

To address this problem my amendment will require the Office of Advocacy to report to Congress on the feasibility, personnel, resources required and overall cost to carry out this legislation. It will also require to assess whether the legislation will result in a duplication of functions. To make sure that costs are controlled, it will then require the Chief Counsel to certify that H.R. 585 will not result in any additional costs.

This amendment does not require any elaborate study, nor does it prohibit H.R. 585 from being implemented, but given the fact that we never heard from the Office of Advocacy, it just asks before it is implemented that we know how much the legislation will cost if it is able to do so, and whether they believe it will result in duplication. If the Chief Counsel simply reports and certifies to Congress on this, then H.R. 585 can be implemented.

At a minimum this will provide the Committee with essential information regarding this new law and permit for productive oversight to occur. It also provides taxpayers with greater transparency. Such an effort is in line with the Committee's oversight plan, which goes to great lengths to limit duplication within the SBA. For this reason, I urge my colleagues to support and vote yes on this amendment, which is a vote for transparency and reducing waste and duplication in the SBA.

With that I yield back, Mr. Chairman.

Chairman GRAVES. Any other Members that wish to be heard on the amendment?

Seeing none, as I explained earlier, this simply transfers a function currently performed by the Administrator to the Office of Chief Counsel of Advocacy. There isn't going to be any duplication that occurs. The bill just ensures that an agency does not go through the pointless exercise of having a size standard approved under the RFA, and then when it is time to put it into place, put the regulation into place, have it rejected by the SBA. And I don't believe there will be any additional costs because the costs associated with this transfer, you know, it is going to be done—the analysis is going to be done by one agency or the other. So I don't believe there is going to be any additional costs.

Ms. VELÁZQUEZ. Mr. Chairman?

Chairman GRAVES. Yes.

Ms. VELÁZQUEZ. On top of the 52 agencies that we are adding to the Office of Advocacy, we are going to add this new responsibility, and you mean to say it is not going to cost anything?

Chairman GRAVES. Well, no, because we are transferring that responsibility from one office to the next. We are not asking another office to do it all over again.

So with that, the question is on the amendment by Representative Velázquez. All those in favor, say aye.

All those opposed, no.

The noes appear to have it.

Ms. VELÁZQUEZ. I ask for a recorded vote.

Chairman GRAVES. A recorded vote has been requested. Clerk, please call the roll.

The CLERK. Mr. Graves?

Mr. GRAVES. No.

The CLERK. Mr. Graves votes no.

Mr. Bartlett?

Mr. BARTLETT. No.

The CLERK. Mr. Bartlett votes no.

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. King?

Mr. KING. No.

The CLERK. Mr. King votes no.

Mr. Coffman?

Mr. COFFMAN. No.

The CLERK. Mr. Coffman votes no.

Mr. Mulvaney?

Mr. MULVANEY. No.

The CLERK. Mr. Mulvaney votes no.

Mr. Tipton?

Mr. TIPTON. No.

The CLERK. Mr. Tipton votes no.

Mr. Landry?

Mr. LANDRY. No.

The CLERK. Mr. Landry votes no.

Ms. Herrera Beutler?

Ms. HERRERA BEUTLER. Yes.

The CLERK. Ms. Herrera Beutler votes yes.

Mr. West?

Mr. WEST. Yes.

The CLERK. Mr. West votes yes.

Mrs. Ellmers?

Mrs. ELLMERS. No.

The CLERK. Mrs. Ellmers votes no.

Mr. Walsh?

Mr. WALSH. No.

The CLERK. Mr. Walsh votes no.

Mr. Hanna?

Mr. HANNA. No.

The CLERK. Mr. Hanna votes no.

Mr. Barletta?

Mr. BARLETTA. No.

The CLERK. Mr. Barletta votes no.

Ms. Velázquez?

Ms. VELÁZQUEZ. Aye.

The CLERK. Ms. Velázquez votes yes.

Mr. Schrader?

Mr. SCHRADER. Yes.

The CLERK. Mr. Schrader votes yes.

Mr. Critz?

Mr. CRITZ. Aye.

The CLERK. Mr. Critz votes yes.

Mr. Altmire?

Mr. ALTMIRE. Aye.

The CLERK. Mr. Altmire votes yes.

Ms. Clarke?

Ms. CLARKE. Aye.

The CLERK. Ms. Clarke votes yes.

Ms. Chu?

[No response.]

The CLERK. Mr. Cicilline?

Mr. CICILLINE. Aye.

The CLERK. Mr. Cicilline votes yes.

Mr. Richmond?

[No response.]

The CLERK. Mr. Peters?

Mr. PETERS. Aye.

The CLERK. Mr. Peters votes yes.

Mr. Owens?

Mr. OWENS. Aye.

The CLERK. Mr. Owens votes yes.

Mr. Keating?

Mr. KEATING. Yes.

The CLERK. Mr. Keating votes yes.

Chairman GRAVES. Are there any other Members that wish to be recorded?

Seeing none, clerk, please report the vote.

The CLERK. Eleven ayes, twelve noes.

Chairman GRAVES. Last vote there were 11 ayes, 12 noes. The amendment is not agreed to.

Are there any other Members that wish to offer amendments?

Mr. SCHRADER. Mr. Chair, could I move to strike the last word briefly?

Chairman GRAVES. Absolutely.

Mr. SCHRADER. Just a concern on the bill itself. While I know it is well intentioned, and I appreciate the chair's efforts to entertain the discussion, particularly the ranking member, it just seems pretty duplicative to me. I don't see why we have two different outfits promulgating rules and size standards. I think it is going to be very, very confusing to small businesses at the end of the day. And, you know, one of our goals of our Committee is to try and eliminate some of the duplication and eliminate some of the confusion the small businesses face trying to figure out if they fit into this program or that program. So with that, I am probably going to be voting no, sir.

Chairman GRAVES. All right. I appreciate that. Again, we are transferring the authority. We are not duplicating it.

With that, if there are no other amendments, the question is on agreeing to H.R. 585. All those in favor, say aye.

All those opposed, no.

In the opinion of the chair, the ayes have it.

Ms. VELÁZQUEZ. I ask for a recorded vote.

Chairman GRAVES. A recorded vote has been requested. Clerk, please call the roll.

The CLERK. Mr. Graves?

Mr. GRAVES. Aye.

The CLERK. Mr. Graves votes yes.

Mr. Bartlett?

Mr. BARTLETT. Aye.

The CLERK. Mr. Bartlett votes yes.

Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot votes yes.

Mr. King?

Mr. KING. Aye.

The CLERK. Mr. King votes yes.

Mr. Coffman?

Mr. COFFMAN. Aye.

The CLERK. Mr. Coffman votes yes.

Mr. Mulvaney?

Mr. MULVANEY. Aye.

The CLERK. Mr. Mulvaney votes yes.

Mr. Tipton?

Mr. TIPTON. Aye.

The CLERK. Mr. Tipton votes yes.

Mr. Landry?

Mr. LANDRY. Aye.

The CLERK. Mr. Landry votes yes.

Ms. Herrera Beutler?

Chairman GRAVES. Was that an aye?

Ms. VELÁZQUEZ. You understand it is going to increase the debt.

The CLERK. Ms. Herrera Beutler?

Ms. HERRERA BEUTLER. Yes.

The CLERK. Ms. Herrera Beutler votes yes.

Mr. West?

[No response.]

The CLERK. Mrs. Ellmers?

Mrs. ELLMERS. Yes.

The CLERK. Mrs. Ellmers votes yes.

Mr. Walsh?

Mr. WALSH. Yes.

The CLERK. Mr. Walsh votes yes.

Mr. Hanna?

Mr. HANNA. Yes.

The CLERK. Mr. Hanna votes yes.

Mr. Barletta?

Mr. BARLETTA. Yes.

The CLERK. Mr. Barletta votes yes.

Ms. Velázquez?

Ms. VELÁZQUEZ. No.

The CLERK. Ms. Velázquez votes no.

Mr. Schrader?

Mr. SCHRADER. No.

The CLERK. Mr. Schrader votes no.

Mr. Critz?

Mr. CRITZ. No.

The CLERK. Mr. Critz votes no.
 Mr. Altmire?
 [No response.]
 The CLERK. Ms. Clarke?
 Ms. CLARKE. No.
 The CLERK. Ms. Clarke votes no.
 Ms. Chu?
 [No response.]
 The CLERK. Mr. Cicilline?
 Mr. CICILLINE. No.
 The CLERK. Mr. Cicilline votes no.
 Mr. Richmond?
 [No response.]
 The CLERK. Mr. Peters?
 Mr. PETERS. No.
 The CLERK. Mr. Peters votes no.
 Mr. Owens?
 Mr. OWENS. No.
 The CLERK. Mr. Owens votes no.
 Mr. Keating?
 Mr. KEATING. No.
 The CLERK. Mr. Keating votes no.
 Chairman GRAVES. Are there any other Members that wish to be recorded?
 Seeing none, the clerk please report the vote.
 The CLERK. Thirteen ayes, eight noes.
 Chairman GRAVES. By a vote of 13 yeas, 8 noes, the bill is favorably reported to the House.
 I would ask unanimous consent that the staff be authorized to make any technical and conforming changes and take all necessary actions to report the bill to the House.
 Ms. VELÁZQUEZ. Mr. Chairman, I just would like for the Committee to be able to notice that we are going to be filing our own views on both bills.
 Chairman GRAVES. So noted.
 With that, the hearing is adjourned. Thanks, everybody.
 [Whereupon, at 4:04 p.m., the Committee was adjourned.]

AMENDMENT TO H.R. 527

OFFERED BY MR. OWENS OF NEW YORK

Add at the end of the bill the following:

SEC. 10. AGENCY PREPARATION OF GUIDES.

Section 212(a)(5) the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended to read as follows:

“(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small en-

tities to distribute such guides. In developing guides, agencies shall solicit input from affected small entities or associations of affected small entities. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.”.

AMENDMENT TO H.R. 527

OFFERED BY MR. SCHRADER OF OREGON

Page 9, insert after line 15 the following (and redesignate succeeding sections accordingly):

SEC. 3. EXPANSION OF REPORT OF REGULATORY AGENDA.

Section 602 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “and” at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

“(3) a brief description of the sector of the North American Industrial Classification System that is primarily affected by any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities; and”.

(2) in subsection (c), to read as follows:

“(c) Each agency shall prominently display a plain language summary of the information contained in the regulatory flexibility agenda published under subsection (a) on its website within 3 days of its publication in the Federal Register. The Office of Advocacy of the Small Business Administration shall compile and prominently display a plain language summary of the regulatory agendas referenced in subsection (a) for each agency on its website within 3 days of their publication in the Federal Register.”.

AMENDMENT TO H.R. 527

OFFERED BY MR. OWENS OF NEW YORK

Page 20, insert after line 5 the following (and redesignate succeeding sections accordingly):

“(c) The plan shall include a section that details how an agency will conduct outreach to and meaningfully include small businesses for the purposes of carrying out this section. The agency shall include in this section a plan for how the agency will contact small businesses and gather their input on existing agency rules”.

AMENDMENT TO H.R. 527

OFFERED BY MS. VELÁZQUEZ OF NEW YORK

Page 3, line 12, insert before the period at the end the following: The amendment made by this subsection shall not apply to a rule making by the Administrator of the Small Business Administration regarding the contracting, lending, investment, or entrepreneurial development programs of the Administrator

Page 13, insert after line 6 the following:

(f) APPLICATION TO CERTAIN RULES.—This section and the amendments made by this section shall not apply to a rule making by the Administrator of the Small Business Administration regarding the contracting, lending, investment, or entrepreneurial development programs of the Administrator.

Page 15, insert after line 3 the following:

(c) APPLICATION TO CERTAIN RULES.—This section and the amendments made by this section shall not apply to a rule making by the Administrator of the Small Business Administration regarding the contracting, lending, investment, or entrepreneurial development programs of the Administrator.

Page 18, line 17, insert before the period at the end the following:

The amendment made by this section shall not apply to a rule making by the Administrator of the Small Business Administration regarding the contracting, lending, investment, or entrepreneurial development programs of the Administrator

AMENDMENT TO H.R. 527

OFFERED BY MS. VELÁZQUEZ OF NEW YORK

Page 17, line 12, insert after “entities.” the following: “Such report shall also include a total cost of conducting the panel described in subsection (c)(2) as well as a detailed report of the components of that total cost, including expenses of officers and employees of the Federal government (at rates authorized for such officers and employees under subchapter I of chapter 57 of title 5, United States Code) who participate in the panel and the rate of salary or basic pay of each officer or employee of the Federal government who participates in the panel, prorated to account for time of service on the panel.”

Page 17, insert after line 12 the following (and redesignate succeeding paragraphs accordingly):

“(3) Not later than 60 days after the end of a fiscal year, the Chief Counsel shall submit a consolidated report detailing the total cost of all panels conducted pursuant to subsection (c)(2) in that fiscal year. This report shall include a detailed description of the components of the total cost, including expenses of officers and employees of the Federal government (at rates authorized for such officers and employees under subchapter I of chapter 57 of title 5, United States Code) who participate in the panel and the rate of salary or basic pay of each officer or employee of the Federal government who participates in the panel, prorated to account for time of service on the panel.”.

AMENDMENT TO H.R. 527

OFFERED BY MS. VELÁZQUEZ OF NEW YORK

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Regulatory Improvement Act of 2011”.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) Small businesses are frequently the source of new products, methods, and innovations.
- (2) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.
- (3) Regulations designed for application to large-scale entities have been applied uniformly to small businesses and other small entities.
- (4) Uniform Federal regulatory and reporting requirements in many instances have imposed on small businesses and other small entities disproportionately burdensome demands, including legal, accounting, and consulting costs.
- (5) Since 1980, Federal agencies have been required to recognize and take account of the differences in the scale and resources of regulated entities but have failed to do so.
- (6) Alternative regulatory approaches that do not conflict with the stated objectives of the statutes the regulations seek to implement may be available and may minimize the significant economic impact of regulations on small businesses and other small entities.
- (7) Federal agencies have failed to analyze and uncover less costly alternative regulatory approaches, despite the fact that the chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), requires them to do so.
- (8) Federal agencies continue to interpret chapter 6 of title 5, United States Code, in a manner that permits them to avoid their analytical responsibilities.
- (9) Significant changes are needed in the methods by which Federal agencies develop and analyze regulations, receive input from affected entities, and develop regulatory alternatives that will lessen the burden or maximize the benefits of final rules to small businesses and other small entities.
- (10) It is the intention of the Congress to amend chapter 6 of title 5, United States Code, to ensure that all impacts, including foreseeable indirect effects, of proposed and final rules are considered by agencies during the rulemaking process and that the agencies assess a full range of alternatives that will limit adverse economic consequences or enhance economic benefits.
- (11) Federal agencies should be capable of assessing the impact of proposed and final rules without delaying the regulatory process or impinging on the ability of Federal agencies to fulfill their statutory mandates.

SEC. 3. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:

- “(9) ECONOMIC IMPACT.—The term ‘economic impact’ means, with respect to a proposed or final rule—
- “(A) any direct economic effect on small entities of such rule; and
 - “(B) any indirect economic effect on small entities which is reasonably foreseeable and results from such rule (with-

out regard to whether small entities will be directly regulated by the rule).”.

SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (b) of section 603 of title 5, United States Code, is amended to read as follows:

“(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement describing—

“(1) the reasons why the action by the agency is being considered;

“(2) the objectives of, and legal basis for, the proposed rule;

“(3) the type of small entities to which the proposed rule will apply;

“(4) the number of small entities to which the proposed rule will apply or why such estimate is not available;

“(5) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement, the costs, and the type of professional skills necessary to comply with the rule; and

“(6) all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule, or the reasons why such a description could not be provided.”.

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) Paragraph (4) of such section is amended by striking “an explanation” and inserting “a detailed explanation”.

(2) Paragraph (5) of such section is amended to read as follows:

“(4) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement, the costs, and the type of professional skills necessary to comply with the rule; and”.

(c) CERTIFICATION OF NO IMPACT.—Subsection (b) of section 605 of title 5, United States Code, is amended by inserting “detailed” before “statement” both places such term appears.

SEC. 5. PERIODIC REVIEW OF RULES.

Section 610 of title 5, United States Code, is amended to read as follows:

“§ 610. Periodic review of rules

“(a) Not later than 180 days after the enactment of the Small Business Regulatory Improvement Act of 2011, each agency shall publish in the Federal Register and place on its website a plan for the periodic review of rules issued by the agency which the head of the agency determines have a significant economic impact on a substantial number of small entities. Such determination shall be made without regard to whether the agency performed an analysis under section 604. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize significant economic impacts on a substantial number of small entities. Such plan may be amended

by the agency at any time by publishing the revision in the Federal Register and subsequently placing the amended plan on the agency's website.

“(b) The plan shall provide for the review of all such agency rules existing on the date of the enactment of the Small Business Regulatory Improvement Act of 2011 within 10 years of the date of publication of the plan in the Federal Register and for review of rules adopted after the date of enactment of the Small Business Regulatory Improvement Act of 2011 within 10 years after the publication of the final rule in the Federal Register. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the head of the agency shall so certify in a statement published in the Federal Register and may extend the review for not longer than 2 years after publication of notice of extension in the Federal Register. Such certification and notice shall be sent to the Chief Counsel for Advocacy and the Congress.

“(c) Each agency shall annually submit a report regarding the results of its review pursuant to such plan to the Congress and, in the case of agencies other than independent regulatory agencies (as defined in section 3502(5) of title 44, United States Code) to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget. Such report shall include the identification of any rule with respect to which the head of the agency made a determination described in paragraph (5) or (6) of subsection (d) and a detailed explanation of the reasons for such determination.

“(d) In reviewing rules under such plan, the agency shall consider the following factors:

“(1) The continued need for the rule.

“(2) The nature of complaints received by the agency from small entities concerning the rule.

“(3) Comments by the Regulatory Enforcement Ombudsman and the Chief Counsel for Advocacy.

“(4) The complexity of the rule.

“(5) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, unless the head of the agency determines it to be infeasible, State and local rules.

“(6) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

“(e) The agency shall publish in the Federal Register and on its website a list of rules to be reviewed pursuant to such plan. Such publication shall include a brief description of the rule, the reason why the agency determined that it has a significant economic impact on a substantial number of small entities (without regard to whether it had prepared a final regulatory flexibility analysis for the rule), and request comments from the public, the Chief Counsel for Advocacy, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rule.”.

**SEC. 6. CHANGES TO THE REGULATORY FLEXIBILITY ACT TO COM-
PORT WITH EXECUTIVE ORDER 13272.**

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603 of title 5, United States Code, is amended by adding at the end the following:

“(e) An agency shall notify the Chief Counsel for Advocacy of the Small Business Administration of any draft rules that may have a significant economic impact on a substantial number of small entities either—

“(1) when the agency submits a draft rule to the Office of Information and Regulatory Affairs at the Office of Management and Budget, if submission is required; or

“(2) if no submission to the Office of Information and Regulatory Affairs is so required, at a reasonable time prior to publication of the rule by the agency.”

(b) INCLUSION IN FINAL REGULATORY FLEXIBILITY ANALYSIS OF RESPONSE TO COMMENTS ON CERTIFICATION OF PROPOSED RULE.—Paragraph (2) of section 604(a) of title 5, United States Code, is amended by inserting after “initial regulatory flexibility analysis” the following: “(or certification of the proposed rule under section 605(b))”.

AMENDMENT TO H.R. 527

OFFERED BY MS. VELÁZQUEZ OF NEW YORK

Add, at the end of the bill, the following:

SEC. 10. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on October 1 of the first full fiscal year—

(1) for which no funding is authorized by law for the Office of Advocacy of the Small Business Administration in an amount exceeding the level of funding for the Office for fiscal year 2011; and

(2) that follows any fiscal year for which the actual annual Federal budget deficit did not exceed \$500,000,000,000.

AMENDMENT TO H.R. 585

OFFERED BY MS. VELÁZQUEZ OF NEW YORK

Add, at the end of the bill, the following:

SEC. 3. EFFECTIVE DATE; STUDY AND CERTIFICATION REQUIRED REGARDING COST, RESOURCE DUPLICATION AND AGENCY WASTE.

This Act and the amendments made by this Act shall not take effect until the date that the Chief Counsel for Advocacy of the Small Business Administration—

(1) reports to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the feasibility, personnel resources required, and overall cost to the Chief Counsel of carrying out the responsibilities of the Chief Counsel under the amendments made in section 2, including an analysis of whether carrying out such responsibilities will result in a du-

plication of functions in the Small Business Administration, including those of the Office of Size Standards; and

(2) certifies to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate that the Chief Counsel may carry out the responsibilities of the Chief Counsel under the amendments made in section 2 without incurring any additional costs.

AMENDMENT TO H.R. 527

OFFERED BY MR. CRITZ OF PENNSYLVANIA

Page 18, insert after line 11 the following (and redesignate succeeding subsections accordingly):

“(f)(1) If Congress approves a trade agreement under section 2191 of title 19, United States Code, then the Chief Counsel for Advocacy of the Small Business Administration shall—

“(A) identify small entities or representatives of small entities or a combination of both for the purpose of obtaining advice, input, and recommendations from those persons about the potential economic impacts of rules implementing or pertaining to such trade agreement; and

“(B) convene a review panel consisting of an employee from the Office of Advocacy of the Small Business Administration, an employee from relevant agencies or, if appropriate, an employee from the Office of Information and Regulatory Affairs of the Office of Management and Budget to review the advice, input, and recommendations provided to the Chief Counsel under subparagraph (A).

“(2) Not later than 60 days after the review panel described in paragraph (1) is convened, the Chief Counsel for Advocacy of the Small Business Administration shall, after consultation with the members of such panel, submit a report to Congress. Such report shall include an assessment of the economic impact of rules implementing or pertaining to the trade agreement on small entities and a discussion of any alternatives that will minimize adverse significant economic impacts or maximize beneficial significant economic impacts on small entities.”.

AMENDMENT TO H.R. 527

OFFERED BY MR. CRITZ OF PENNSYLVANIA

Page 17, line 9, insert after “small entities” the following: “, including an assessment of the proposed rule’s impact on the cost that small entities pay for energy,”.

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EPA Plans To Cut Back Self-Disclosure Program; AGC Solicits Member Input

April 24, 2012

The U.S. Environmental Protection Agency (EPA) may soon end its program that allows regulated companies to self-disclose environmental violations. EPA's so called "Audit Policy" has been around since 1995 and it has incentivized thousands of companies to voluntarily disclose and correct environmental violations in exchange for reduced (and sometimes waived) fines and penalties. However, the Agency has plans to cut back its Audit Policy program to "a minimal national presence." AGC is currently evaluating whether or not to push EPA to maintain this existing program and seeks member input on the value of having the self-disclosure option – particularly when managing mergers and acquisitions.

In dealing with anticipated budget cuts, the EPA Office of Enforcement and Compliance Assurance (OECA) has recently issued a draft "Program Manager Guidance" directed to the Agency's regional offices that, if finalized, would instruct EPA's regional offices to spend **no resources** processing self-disclosures under the Audit Policy effective October 1, 2012, the start of the agency's 2013 fiscal year (FY). The guidance states –

The EPA Regions should consult with Headquarters before initiating any new work in response to self-disclosures. For FY 2013, the Audit Policy (self-disclosure) program is one of the areas where OECA will reduce its program work to a minimal national presence. OECA is working with the Regions to develop a plan for reducing work in this area to a level of minimal national coverage.

See draft "Program Manager Guidance" at page 14.

AGC Needs YOUR Input!

Outside legal experts predict that EPA will proceed to de-fund its audit program if the regulated community does not stand up for the policy and its value. If this program is used widely by the membership, AGC will draft a comment letter to EPA laying out the construction industry's views of why this change in direction is a serious mistake. If your company finds value in having the option of audit disclosure, please email your comments or concerns to Leah Pilconis at lpilconis@agc.org as soon as possible.

Although EPA is not formally taking comment from the regulated community on draft "Program Manager Guidance," AGC understands that the Agency has been receiving some comments and that those comments are being reviewed internally.

'Significant Number' of Disclosures Have Resulted in 'Small Pollution Cuts'

EPA Plans To Cut Back Self-Disclosure Program; AGC Solicits Mem... <http://news.agc.org/2012/04/24/epa-plans-to-cut-back-self-disclosure...>

on reducing pollution that poses the greatest threats to public health and the environment, according to draft national Program Manager Guidance for FY 2013.

The FY 2013 draft guidance is available [online](#). More information on EPA's FY 2013 planning and budget is online at <http://www.epa.gov/planandbudget/annualplan/fy2013.html>. EPA's Audit Policy Web page is at <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>.

Summary of How EPA's Audit Policy Works

EPA's initial policy of self-audits and disclosures was published in the *Federal Register* on December 22, 1995. On April 11, 2000, EPA published an amended policy, entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," (Audit Policy) which is currently in effect. 65 *Fed. Reg.* 19,618 (Apr. 11, 2000).

EPA's Audit Policy provides incentives for company owners to self-report environmental violations, resolving violations at nearly 10,000 facilities since 1995, according to EPA. Fines and penalties may be reduced or waived if a company voluntarily reports a violation. Penalties are not waived for repeat offenders or violations that caused actual harm.

Specifically, under EPA's Audit Policy gravity-based penalties for violations of EPA-administered statutes are reduced or completely eliminated if the violations are voluntarily discovered, promptly disclosed to EPA, and meet a number of other specified conditions. The nine specific requirements of the policy are:

1. The violation must be systematically discovered, either through: (a) an environmental audit; or (b) a compliance management system reflecting the company's due diligence in preventing, detecting, and correcting violations.
2. The violation must be discovered voluntarily (*i.e.*, not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement).
3. The company must fully disclose the specific violation in writing to EPA within 21 days (or within such shorter time as may be required by law) after the entity discovered that the violation has, or may have, occurred.
4. The company must discover and disclose the potential violation to EPA prior to: (a) the commencement of a federal, state or local agency inspection or investigation, or the issuance by such agency of an information request to the company; (b) notice of a citizen suit; (c) the filing of a complaint by a third party; (d) the reporting of the violation to EPA (or other government agency) by a "whistleblower" employee; or (e) imminent discovery of the violation by a regulatory agency.
5. The company must correct the violation within 60 calendar days from the date of discovery, certify as such in writing, and take appropriate measures as determined by EPA to remedy any environmental or human harm due to the violation.
6. The company must agree in writing to take steps to prevent a recurrence of the violation.
7. The specific violation (or a closely related violation) cannot have occurred previously within the past three years at the same facility, or within the past five years as part of a pattern at multiple facilities owned or operated by the same entity.
8. The violation cannot be one that (a) resulted in serious actual harm, or may have presented an imminent and substantial endangerment, to human health or the environment, or (b) violates the specific terms of any judicial or administrative order, or consent agreement.
9. The company must cooperate with EPA and provide such information as is necessary and requested by EPA to determine applicability of the Policy.

If a company can establish that it satisfies all of the conditions of the policy, EPA will not seek gravity-based penalties for the disclosed violations. If a company can establish that it satisfies all of the conditions of the policy except for the "systematic discovery" requirement, EPA will reduce gravity-based penalties by 75 percent and generally will not pursue criminal enforcement. Under the policy, EPA will neither request nor use an environmental audit report to initiate a civil or criminal investigation of an entity, nor will it request an environmental audit report in a routine inspection.

For more information, or to provide AGC with input on value your company finds having the option of audit disclosure, please email Leah Pilconis at lpilconis@agc.org.

EPA Plans To Cut Back Self-Disclosure Program; AGC Solicits Mem... <http://news.agc.org/2012/04/24/epa-plans-to-cut-back-self-disclosure...>

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H.R. 527

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Regulatory Flexibility Improvements Act of 2011”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification and expansion of rules covered by the Regulatory Flexibility Act.
- Sec. 3. Requirements providing for more detailed analyses.
- Sec. 4. Repeal of waiver and delay authority; additional powers of the Chief Counsel for Advocacy.
- Sec. 5. Procedures for gathering comments.
- Sec. 6. Periodic review of rules.
- Sec. 7. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.
- Sec. 8. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.
- Sec. 9. Clerical amendments.

SEC. 2. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

(a) **IN GENERAL.**—Paragraph (2) of section 601 of title 5, United States Code, is amended to read as follows:

“(2) **RULE.**—The term ‘rule’ has the meaning given such term in section 551(4) of this title, except that such term does not include a rule of particular (and not general) applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.”.

(b) **INCLUSION OF RULES WITH INDIRECT EFFECTS.**—Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:

“(9) **ECONOMIC IMPACT.**—The term ‘economic impact’ means, with respect to a proposed or final rule—

“(A) any direct economic effect on small entities of such rule; and

“(B) any indirect economic effect on small entities which is reasonably foreseeable and results from such rule (without regard to whether small entities will be directly regulated by the rule).”.

(c) **INCLUSION OF RULES WITH BENEFICIAL EFFECTS.**—

(1) **INITIAL REGULATORY FLEXIBILITY ANALYSIS.**—Subsection (c) of section 603 of title 5, United States Code, is amended by striking the first sentence and inserting “Each initial regulatory flexibility analysis shall also contain a detailed description of alternatives to the proposed rule which minimize any adverse significant economic impact or maximize any beneficial significant economic impact on small entities.”.

(2) **FINAL REGULATORY FLEXIBILITY ANALYSIS.**—The first paragraph (6) of section 604(a) of title 5, United States Code, is amended by striking “minimize the significant economic im-

pact” and inserting “minimize the adverse significant economic impact or maximize the beneficial significant economic impact”.

(d) INCLUSION OF RULES AFFECTING TRIBAL ORGANIZATIONS.—Paragraph (5) of section 601 of title 5, United States Code, is amended by inserting “and tribal organizations (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))),” after “special districts,”.

(e) INCLUSION OF LAND MANAGEMENT PLANS AND FORMAL RULE-MAKING.—

(1) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (a) of section 603 of title 5, United States Code, is amended in the first sentence—

(A) by striking “or” after “proposed rule,”; and

(B) by inserting “or publishes a revision or amendment to a land management plan,” after “United States,”.

(2) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (a) of section 604 of title 5, United States Code, is amended in the first sentence—

(A) by striking “or” after “proposed rulemaking,”; and

(B) by inserting “, or adopts a revision or amendment to a land management plan,” after “section 603(a),”.

(3) LAND MANAGEMENT PLAN DEFINED.—Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:

“(10) LAND MANAGEMENT PLAN.—

“(A) IN GENERAL.—The term ‘land management plan’ means—

“(i) any plan developed by the Secretary of Agriculture under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604); and

“(ii) any plan developed by the Secretary of Interior under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

“(B) REVISION.—The term ‘revision’ means any change to a land management plan which—

“(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(5) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)); or

“(ii) in the case of a plan described in subparagraph (A)(ii), is made under section 1610.5–6 of title 43, Code of Federal Regulations (or any successor regulation).

“(C) AMENDMENT.—The term ‘amendment’ means any change to a land management plan which—

“(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(4) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(4)) and with respect to which the Secretary of Agriculture prepares a statement described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); or

“(ii) in the case of a plan described in subparagraph (A)(ii), is made under section 1610.5–5 of title 43, Code

of Federal Regulations (or any successor regulation) and with respect to which the Secretary of the Interior prepares a statement described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).”.

(f) INCLUSION OF CERTAIN INTERPRETIVE RULES INVOLVING THE INTERNAL REVENUE LAWS.—

(1) IN GENERAL.—Subsection (a) of section 603 of title 5, United States Code, is amended by striking the period at the end and inserting “or a recordkeeping requirement, and without regard to whether such requirement is imposed by statute or regulation.”.

(2) COLLECTION OF INFORMATION.—Paragraph (7) of section 601 of title 5, United States Code, is amended to read as follows:

“(7) COLLECTION OF INFORMATION.—The term ‘collection of information’ has the meaning given such term in section 3502(3) of title 44, United States Code.”.

(3) RECORDKEEPING REQUIREMENT.—Paragraph (8) of section 601 of title 5, United States Code, is amended to read as follows:

“(8) RECORDKEEPING REQUIREMENT.—The term ‘recordkeeping requirement’ has the meaning given such term in section 3502(13) of title 44, United States Code.”.

(g) DEFINITION OF SMALL ORGANIZATION.—Paragraph (4) of section 601 of title 5, United States Code, is amended to read as follows:

“(4) SMALL ORGANIZATION.—

“(A) IN GENERAL.—The term ‘small organization’ means any not-for-profit enterprise which, as of the issuance of the notice of proposed rulemaking—

“(i) in the case of an enterprise which is described by a classification code of the North American Industrial Classification System, does not exceed the size standard established by the Administrator of the Small Business Administration pursuant to section 3 of the Small Business Act (15 U.S.C. 632) for small business concerns described by such classification code; and

“(ii) in the case of any other enterprise, has a net worth that does not exceed \$7,000,000 and has not more than 500 employees.

“(B) LOCAL LABOR ORGANIZATIONS.—In the case of any local labor organization, subparagraph (A) shall be applied without regard to any national or international organization of which such local labor organization is a part.

“(C) AGENCY DEFINITIONS.—Subparagraphs (A) and (B) shall not apply to the extent that an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions for such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register.”.

SEC. 3. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) Subsection (b) of section 603 of title 5, United States Code, is amended to read as follows:

“(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

“(1) describing the reasons why action by the agency is being considered;

“(2) describing the objectives of, and legal basis for, the proposed rule;

“(3) estimating the number and type of small entities to which the proposed rule will apply;

“(4) describing the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report and record;

“(5) describing all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule, or the reasons why such a description could not be provided;

“(6) estimating the additional cumulative economic impact of the proposed rule on small entities beyond that already imposed on the class of small entities by the agency or why such an estimate is not available; and

“(7) describing any disproportionate economic impact on small entities or a specific class of small entities.”.

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) IN GENERAL.—Section 604(a) of title 5, United States Code, is amended—

(A) in paragraph (4), by striking “an explanation” and inserting “a detailed explanation”;

(B) in each of paragraphs (4), (5), and the first paragraph (6), by inserting “detailed” before “description”; and

(C) by adding at the end the following:

“(7) describing any disproportionate economic impact on small entities or a specific class of small entities.”.

(2) INCLUSION OF RESPONSE TO COMMENTS ON CERTIFICATION OF PROPOSED RULE.—Paragraph (2) of section 604(a) of title 5, United States Code, is amended by inserting “(or certification of the proposed rule under section 605(b))” after “initial regulatory flexibility analysis”.

(3) PUBLICATION OF ANALYSIS ON WEBSITE.—Subsection (b) of section 604 of title 5, United States Code, is amended to read as follows:

“(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the agency’s website, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof which includes the telephone number, mailing address, and link to the website where the complete analysis may be obtained.”.

(c) CROSS-REFERENCES TO OTHER ANALYSES.—Subsection (a) of section 605 of title 5, United States Code, is amended to read as follows:

“(a) A Federal agency shall be treated as satisfying any requirement regarding the content of an agenda or regulatory flexibility analysis under section 602, 603, or 604, if such agency provides in such agenda or analysis a cross-reference to the specific portion of another agenda or analysis which is required by any other law and which satisfies such requirement.”.

(d) CERTIFICATIONS.—Subsection (b) of section 605 of title 5, United States Code, is amended—

(1) by inserting “detailed” before “statement”; and

(2) by inserting “and legal” after “factual”.

(e) QUANTIFICATION REQUIREMENTS.—Section 607 of title 5, United States Code, is amended to read as follows:

“§ 607. Quantification requirements

“In complying with sections 603 and 604, an agency shall provide—

“(1) a quantifiable or numerical description of the effects of the proposed or final rule and alternatives to the proposed or final rule; or

“(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.”.

SEC. 4. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDITIONAL POWERS OF THE CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 608 is amended to read as follows:

“§ 608. Additional powers of Chief Counsel for Advocacy

“(a)(1) Not later than 270 days after the date of the enactment of the Regulatory Flexibility Reform Act, the Chief Counsel for Advocacy of the Small Business Administration shall, after opportunity for notice and comment under section 553, issue rules governing agency compliance with this chapter. The Chief Counsel may modify or amend such rules after notice and comment under section 553. This chapter (other than this subsection) shall not apply with respect to the issuance, modification, and amendment of rules under this paragraph.

“(2) An agency shall not issue rules which supplement the rules issued under subsection (a) unless such agency has first consulted with the Chief Counsel for Advocacy to ensure that such supplemental rules comply with this chapter and the rules issued under paragraph (1).

“(b) Notwithstanding any other law, the Chief Counsel for Advocacy of the Small Business Administration may intervene in any agency adjudication (unless such agency is authorized to impose a fine or penalty under such adjudication), and may inform the agency of the impact that any decision on the record may have on small entities. The Chief Counsel shall not initiate an appeal with respect to any adjudication in which the Chief Counsel intervenes under this subsection.

“(c) The Chief Counsel for Advocacy may file comments in response to any agency notice requesting comment, regardless of whether the agency is required to file a general notice of proposed rulemaking under section 553.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 611(a)(1) of such title is amended by striking “608(b),”.

(2) Section 611(a)(2) of such title is amended by striking “608(b),”.

(3) Section 611(a)(3) of such title is amended—

(A) by striking subparagraph (B); and

(B) by striking “(3)(A) A small entity” and inserting the following:

“(3) A small entity”.

SEC. 5. PROCEDURES FOR GATHERING COMMENTS.

Section 609 of title 5, United States Code, is amended by striking subsection (b) and all that follows and inserting the following:

“(b)(1) Prior to publication of any proposed rule described in subsection (e), an agency making such rule shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with—

“(A) all materials prepared or utilized by the agency in making the proposed rule, including the draft of the proposed rule; and

“(B) information on the potential adverse and beneficial economic impacts of the proposed rule on small entities and the type of small entities that might be affected.

“(2) An agency shall not be required under paragraph (1) to provide the exact language of any draft if the rule—

“(A) relates to the internal revenue laws of the United States; or

“(B) is proposed by an independent regulatory agency (as defined in section 3502(5) of title 44, United States Code).

“(c) Not later than 15 days after the receipt of such materials and information under subsection (b), the Chief Counsel for Advocacy of the Small Business Administration shall—

“(1) identify small entities or representatives of small entities or a combination of both for the purpose of obtaining advice, input, and recommendations from those persons about the potential economic impacts of the proposed rule and the compliance of the agency with section 603 of this title; and

“(2) convene a review panel consisting of an employee from the Office of Advocacy of the Small Business Administration, an employee from the agency making the rule, and in the case of an agency other than an independent regulatory agency (as defined in section 3502(5) of title 44, United States Code), an employee from the Office of Information and Regulatory Affairs of the Office of Management and Budget to review the materials and information provided to the Chief Counsel under subsection (b).

“(d)(1) Not later than 60 days after the review panel described in subsection (c)(2) is convened, the Chief Counsel for Advocacy of the Small Business Administration shall, after consultation with the members of such panel, submit a report to the agency and, in the case of an agency other than an independent regulatory agency (as defined in section 3502(5) of title 44, United States Code), the Office of Information and Regulatory Affairs of the Office of Management and Budget.

“(2) Such report shall include an assessment of the economic impact of the proposed rule on small entities and a discussion of any alternatives that will minimize adverse significant economic impacts or maximize beneficial significant economic impacts on small entities.

“(3) Such report shall become part of the rulemaking record. In the publication of the proposed rule, the agency shall explain what actions, if any, the agency took in response to such report.

“(e) A proposed rule is described by this subsection if the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, the head of the agency (or the delegatee of the head of the agency), or an independent regulatory agency determines that the proposed rule is likely to result in—

“(1) an annual effect on the economy of \$100,000,000 or more;

“(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, tribal organizations, or geographic regions;

“(3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

“(4) a significant economic impact on a substantial number of small entities.

“(f) Upon application by the agency, the Chief Counsel for Advocacy of the Small Business Administration may waive the requirements of subsections (b) through (e) if the Chief Counsel determines that compliance with the requirements of such subsections are impracticable, unnecessary, or contrary to the public interest.”.

SEC. 6. PERIODIC REVIEW OF RULES.

Section 610 of title 5, United States Code, is amended to read as follows:

“§ 610. Periodic review of rules

“(a) Not later than 180 days after the enactment of the Regulatory Flexibility Improvements Act of 2011, each agency shall publish in the Federal Register and place on its website a plan for the periodic review of rules issued by the agency which the head of the agency determines have a significant economic impact on a substantial number of small entities. Such determination shall be made without regard to whether the agency performed an analysis under section 604. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any adverse significant economic impacts or maximize any beneficial significant economic impacts on a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register and subsequently placing the amended plan on the agency’s website.

“(b) The plan shall provide for the review of all such agency rules existing on the date of the enactment of the Regulatory Flexibility Improvements Act of 2011 within 10 years of the date of publication of the plan in the Federal Register and for review of rules

adopted after the date of enactment of the Regulatory Flexibility Improvements Act of 2011 within 10 years after the publication of the final rule in the Federal Register. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the head of the agency shall so certify in a statement published in the Federal Register and may extend the review for not longer than 2 years after publication of notice of extension in the Federal Register. Such certification and notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration and the Congress.

“(c) Each agency shall annually submit a report regarding the results of its review pursuant to such plan to the Congress, the Chief Counsel for Advocacy of the Small Business Administration, and, in the case of agencies other than independent regulatory agencies (as defined in section 3502(5) of title 44, United States Code) to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget. Such report shall include the identification of any rule with respect to which the head of the agency made a determination described in paragraph (5) or (6) of subsection (d) and a detailed explanation of the reasons for such determination.

“(d) In reviewing a rule pursuant to subsections (a) through (c), the agency shall amend or rescind the rule to minimize any adverse significant economic impact on a substantial number of small entities or disproportionate economic impact on a specific class of small entities, or maximize any beneficial significant economic impact of the rule on a substantial number of small entities to the greatest extent possible, consistent with the stated objectives of applicable statutes. In amending or rescinding the rule, the agency shall consider the following factors:

“(1) The continued need for the rule.

“(2) The nature of complaints received by the agency from small entities concerning the rule.

“(3) Comments by the Regulatory Enforcement Ombudsman and the Chief Counsel for Advocacy of the Small Business Administration.

“(4) The complexity of the rule.

“(5) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, unless the head of the agency determines it to be infeasible, State and local rules.

“(6) The contribution of the rule to the cumulative economic impact of all Federal rules on the class of small entities affected by the rule, unless the head of the agency determines that such calculations cannot be made and reports that determination in the annual report required under subsection (c).

“(7) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

“(e) The agency shall publish in the Federal Register and on its website a list of rules to be reviewed pursuant to such plan. Such publication shall include a brief description of the rule, the reason why the agency determined that it has a significant economic impact on a substantial number of small entities (without regard to whether it had prepared a final regulatory flexibility analysis for

the rule), and request comments from the public, the Chief Counsel for Advocacy of the Small Business Administration, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rule.”.

SEC. 7. JUDICIAL REVIEW OF COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATORY FLEXIBILITY ACT AVAILABLE AFTER PUBLICATION OF THE FINAL RULE.

(a) **IN GENERAL.**—Paragraph (1) of section 611(a) of title 5, United States Code, is amended by striking “final agency action” and inserting “such rule”.

(b) **JURISDICTION.**—Paragraph (2) of such section is amended by inserting “(or which would have such jurisdiction if publication of the final rule constituted final agency action)” after “provision of law,”.

(c) **TIME FOR BRINGING ACTION.**—Paragraph (3) of such section is amended—

(1) by striking “final agency action” and inserting “publication of the final rule”; and

(2) by inserting “, in the case of a rule for which the date of final agency action is the same date as the publication of the final rule,” after “except that”.

(d) **INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.**—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting before the first period “or agency compliance with section 601, 603, 604, 605(b), 609, or 610”.

SEC. 8. JURISDICTION OF COURT OF APPEALS OVER RULES IMPLEMENTING THE REGULATORY FLEXIBILITY ACT.

(a) **IN GENERAL.**—Section 2342 of title 28, United States Code, is amended—

(1) in paragraph (6), by striking “and” at the end;

(2) in paragraph (7), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(8) all final rules under section 608(a) of title 5, United States Code.”.

(b) **CONFORMING AMENDMENTS.**—Paragraph (3) of section 2341 of title 28, United States Code, is amended—

(1) in subparagraph (D), by striking “and” at the end;

(2) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(F) the Office of Advocacy of the Small Business Administration, when the final rule is under section 608(a) of title 5, United States Code.”.

(c) **AUTHORIZATION TO INTERVENE AND COMMENT ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCEDURE.**—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting “chapter 5, and chapter 7,” after “this chapter,”.

SEC. 9. CLERICAL AMENDMENTS.

(a) Section 601 of title 5, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking the semicolon at the end and inserting a period; and

(B) by striking “(1) the term” and inserting the following:

“(1) AGENCY.—The term”;

(2) in paragraph (3)—

(A) by striking the semicolon at the end and inserting a period, and

(B) by striking “(3) the term” and inserting the following:

“(3) SMALL BUSINESS.—The term”;

(3) in paragraph (5)—

(A) by striking the semicolon at the end and inserting a period, and

(B) by striking “(5) the term” and inserting the following:

“(5) SMALL GOVERNMENTAL JURISDICTION.—The term”; and

(4) in paragraph (6)—

(A) by striking “; and” and inserting a period, and

(B) by striking “(6) the term” and inserting the following:

“(6) SMALL ENTITY.—The term”.

(b) The heading of section 605 of title 5, United States Code, is amended to read as follows:

“§ 605. Incorporations by reference and certifications”.

(c) The table of sections for chapter 6 of title 5, United States Code, is amended—

(1) by striking the item relating to section 605 and inserting the following new item:

“605. Incorporations by reference and certifications”;

(2) by striking the item relating to section 607 and inserting the following new item:

“607. Quantification requirements”;

and

(3) by striking the item relating to section 608 and inserting the following:

“608. Additional powers of Chief Counsel for Advocacy”.

(d) Chapter 6 of title 5, United States Code, is amended as follows:

(1) In section 603, by striking subsection (d).

(2) In section 604(a) by striking the second paragraph (6).

H.R. 585

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Size Standard Flexibility Act of 2011”.

SEC. 2. ESTABLISHMENT AND APPROVAL OF SMALL BUSINESS CONCERN SIZE STANDARDS BY CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Subparagraph (A) of section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)(A)) is amended to read as follows:

“(A) IN GENERAL.—In addition to the criteria specified in paragraph (1)—

“(i) the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for purposes of this Act or the Small Business Investment Act of 1958; and

“(ii) the Chief Counsel for Advocacy may specify such definitions or standards for purposes of any other Act.”.

(b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of section 3(a)(2)(C) of the Small Business Act (15 U.S.C. 632(a)(2)(C)(iii)) is amended to read as follows:

“(iii) except in the case of a size standard prescribed by the Administrator, is approved by the Chief Counsel for Advocacy.”.

(c) INDUSTRY VARIATION.—Paragraph (3) of section 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is amended—

(1) by inserting “or Chief Counsel for Advocacy, as appropriate” before “shall ensure”; and

(2) by inserting “or Chief Counsel for Advocacy” before the period at the end.

(d) JUDICIAL REVIEW OF SIZE STANDARDS APPROVED BY CHIEF COUNSEL.—Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) is amended by adding at the end the following new paragraph:

“(6) JUDICIAL REVIEW OF STANDARDS APPROVED BY CHIEF COUNSEL.—In the case of an action for judicial review of a rule which includes a definition or standard approved by the Chief Counsel for Advocacy under this subsection, the party seeking such review shall be entitled to join the Chief Counsel as a party in such action.”.



July 12, 2011

The Honorable Sam Graves
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Nydia M. Velázquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Graves and Ranking Member Velázquez,

On behalf of the National Restaurant Association and the National Retail Federation, we are writing in support of H.R. 527, the *Regulatory Flexibility Improvements Act of 2011*. The National Restaurant Association is the leading business association for the restaurant and food service industry. The National Retail Federation is the world's largest retail trade association and the voice of retail worldwide.

The restaurant industry is the nation's second-largest private-sector employer comprised of 960,000 restaurant and foodservice outlets employing 12.8 million workers—nine percent of the U.S. workforce. Despite its size, small businesses dominate the industry; even larger chains are often collections of smaller franchised businesses. As to retail, the industry directly and indirectly accounts for 42 million jobs and contributes \$2.5 trillion annually to GDP. More than 95 percent of retailers are small businesses and Main Street merchants, focused on growth and innovation. Even the largest retailers work regularly with suppliers and vendors that are small businesses, driving job growth for all sectors of the economy.

This legislation would strengthen the protections for small businesses in the often asphyxiating federal regulatory process, while making it more transparent and fair. In particular, the provisions giving the Small Business Administration Office of Advocacy more oversight authority as well as the ability to set the proper Regulatory Flexibility Act protocol will be paramount in defending the rights of small businesses.

Furthermore, eliminating the ability of agencies to ignore the indirect impact of federal regulations on small businesses would lead to a more accurate cost assessment. In addition, in line with President Barack Obama's Executive Order 13563, this legislation would better allow for a cumulative impact analysis of all regulations to better target those existing rules that should be repealed or modified.

Thank you for your attention to small business's concerns. We look forward to working with you to help enact the *Regulatory Flexibility Improvements Act of 2011* into law.

Sincerely,

Angelo I. Amador, Esq.
Vice President
Labor and Workforce Policy

David French
Senior Vice President
Government Relations

CC: Members of the House Small Business Committee

July 12, 2011

The Honorable Sam Graves
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Nydia M. Velázquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Re: Business Letter on H.R. 527, the Regulatory Flexibility Improvements Act of 2011

Dear Chairman Graves and Ranking Member Velázquez,

We are writing to express our support for H.R. 527, the Regulatory Flexibility Improvements Act of 2011. The legislation improves the regulatory process by strengthening agency analysis of a rule's impact on small businesses.

Small businesses are the backbone of our nation's economy, and their ability to operate efficiently and free of unnecessary regulatory burdens is critical for our country's economic recovery. Research from a 2010 study released by the Small Business Administration (SBA) Office of Advocacy illustrates that the small business community is disproportionately affected by burdensome federal regulations. This legislation addresses that small business challenge directly.

H.R. 527 gives the SBA Office of Advocacy additional authorities and requires the office to establish standards for conducting a "regulatory flexibility analysis" during the rulemaking process. It improves transparency and ensures that agencies thoughtfully consider the impact of regulations on small businesses.

The legislation would also improve the accuracy of benefit-cost analysis by requiring agencies to consider the indirect impact of regulations on small business.

Finally, the legislation's provisions on periodic review of rules are in line with President Obama's Executive Order 13563, which requires agencies to conduct a retrospective analysis of existing rules to identify and modify rules in need of reform.

The legislation strengthens the regulatory process and builds upon the intent of Congress when the Regulatory Flexibility Act was originally enacted in 1980.

Thank you for your support of small business and we urge you to vote for the Regulatory Flexibility Improvements Act of 2011, H.R. 527.

Sincerely,

American Architectural Manufacturers
Association
American Beverage Association
American Coatings Association
American Composites Manufacturers
Association

American Council of Engineering Companies
American Fiber Manufacturers Association
American Foundry Society
American Home Furnishings Alliance
American Institute for International Steel
American Sportfishing Association

American Trucking Associations	National Black Chamber of Commerce
Associated Builders & Contractors, Inc.	National Club Association
Association For Hose and Accessories Distribution	National Community Pharmacists Association
Brick Industry Association	National Federation of Independent Business
Carpet and Rug Institute	National Lumber and Building Material Dealers Association
Edison Electric Institute	National Marine Manufacturers Association
European-American Business Council	National Restaurant Association
Food Marketing Institute	National Retail Federation
Food Marketing Institute	National Roofing Contractors Association
Forging Industry Association	National Shooting Sports Foundation
Greeting Card Association	Non-Ferrous Founders' Society
Hearth, Patio & Barbecue Association	North American Association of Food Equipment Manufacturers
Independent Electrical Contractors, Inc.	North American Die Casting Association
Independent Lubricant Manufacturers Association	NPES The Association for Suppliers of Printing, Publishing and Converting Technologies
Industrial Fasteners Institute	Plumbing-Heating-Cooling Contractors –National Association
Industrial Minerals Association - North America	Precision Machined Products Association
Interlocking Concrete Pavement Institute	Printing Industries of America
International Sign Association	Resilient Floor Covering Institute
IPC - Association Connecting Electronics Industries	Security Industry Association
Kitchen Cabinet Manufacturers Association	Small Business & Entrepreneurship Council
Motor and Equipment Manufacturers Association	Snack Food Association
National Association for the Self-Employed	Society of American Florists
National Association of Convenience Stores	Society of Chemical Manufacturers and Affiliates
National Association of Manufacturers	Society of Glass & Ceramic Decorators Products
National Association of REALTORS	Southeastern Lumber Manufacturers Association
National Association of the Remodeling Industry	Specialty Equipment Market Association
National Automatic Merchandising Association	SPI: The Plastics Industry Trade Association
	Textile Care Allied Trades Association
	Treated Wood Council
	Tree Care Industry Association
	U.S. Chamber of Commerce
	Window & Door Manufacturers Association
	Wood Machinery Manufacturers of America

cc: Members of the Committee on Small Business, U.S. House of Representatives